



## Planning Commission Agenda

Meeting of October 15, 2018 – 6:00 p.m.

Council Chambers, Civic Center

1243 National City Boulevard

National City, CA 91950



The Planning Commission requests that all cellphones, pagers, and/or smart devices be turned off during the meeting.

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Welcome to the Planning Commission meeting. The National City Planning Commission conducts its meeting in the interest of community benefit. Your participation is helpful. These proceedings are video recorded.

### **Roll Call**

### **Pledge of Allegiance by Commissioner Flores**

### **Approval of Minutes**

1. Approval of Minutes from the Meeting of September 17, 2018

### **Approval of Agenda**

2. Approval of Agenda for the Meeting on October 15, 2018

### **ORAL COMMUNICATIONS (3 MINUTE TIME LIMIT).**

NOTE: Under State law, items requiring Commission action must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature.

### **PRESENTATIONS**

3. Intra-Connect Presentation

### **CONTINUED PUBLIC HEARINGS**

## **PUBLIC HEARINGS**

4. Resolution taking action on a Code Amendment amending Sections 18.24.050 (Allowed land uses and permit requirements), 18.30.230 (Tobacco specialty shops), and 18.50 (Glossary) of Title 18 (Zoning) of the National City Municipal Code related to electronic smoking devices. (Case File No. 2018-23 A)

## **OTHER BUSINESS**

## **STAFF REPORTS**

Senior Assistant City Attorney

Deputy City Manager

Acting Planning Director

Principal Planner

Commissioners

Chairperson

## **ADJOURNMENT**

Adjournment to the next regularly scheduled meeting on November 5, 2018.



## Planning Commission Minutes

Planning Commission  
Meeting of September 17, 2018  
City Council Chambers, Civic Center  
1243 National City Boulevard  
National City, CA 91950

These minutes have been abbreviated. Due to renovations occurring in Council Chambers, these proceedings were not recorded.

### Agenda Items

The meeting was called to order by Chair Yamane at 6:06 p.m.

### **Roll Call**

Commissioners Present: Quintero, Baca, Sendt, Yamane, Garcia, Flores  
Dela Paz (6:12 pm arrival)

Commissioners Absent: None.

Staff Also Present: Deputy City Manager Brad Raulston, Senior Assistant City Attorney Nicole Pedone, Acting Planning Director Martin Reeder, Principal Planner Ray Pe, Acting Assistant Planner Chris Stanley

**Pledge of Allegiance** Presented by Commissioner Quintero.

1. Approval of Minutes from the Meeting of August 20, 2018.

Motion by Sendt, second by Flores to approve the Minutes for the Meeting of August 20, 2018.

### **Motion carried by the following vote:**

**Ayes:** Quintero, Sendt, Yamane, Flores

**Abstain:** Baca, Garcia

**Noes:** None.

**Absent:** Dela Paz

Commissioners Baca and Garcia abstained due to their absence at the meeting of August 20, 2018.

2. Approval of the Agenda for the Meeting of September 17, 2018.

Motion by Baca, second by Sendt to approve the Agenda for the Meeting of September 17, 2018.

**Ayes:** Quintero, Baca, Sendt, Yamane, Garcia, Flores

**Abstain:** None.

**Noes:** None.

**Absent:** Dela Paz

Commissioner Dela Paz arrived to the dais (6:12 pm).

**ORAL COMMUNICATION:** None.

**PRESENTATIONS:** None.

**CONTINUED PUBLIC HEARINGS:** None.

**PUBLIC HEARINGS:**

3. Resolution taking action on a Conditional Use Permit for on-site alcohol sales (Type 47) and live entertainment at a new restaurant located at 1524 McKinley Ave. (Case File No. 2018-01 CUP)

Presented by Acting Assistant Planner Chris Stanley.

Applicant Nicholas Inzunza has read, understands, and accepts the conditions of the Conditional Use Permit.

Utilizing a PowerPoint presentation, business owner Jonah Gonzales addressed the Commissioners.

Public speaker Rico Lucenti spoke in support of the item.

Motion by Garcia, second by Baca to approve a Conditional Use Permit for on-site alcohol sales (Type 47) and live entertainment at a new restaurant located at 1524 McKinley Ave. (Case File No. 2018-01 CUP)

**Ayes:** Quintero, Baca, Sendt, Yamane, Garcia, Flores, Dela Paz

**Abstain:** None.

**Noes:** None.

**Absent:** None.



**OTHER BUSINESS:** None.

**STAFF REPORTS:**

**Senior Assistant City Attorney:** None.

**Brad Raulston, Deputy City Manager:** None.

**Acting Planning Director:** Answered questions posed at a prior meeting and advised that the red curb on East 16<sup>th</sup> St. and "G" Ave. would be removed and that the construction for traffic calming would be completed within five to six weeks.

**Principal Planner:** None.

**COMMISSIONER REPORTS:**

**Dela Paz:** None.

**Quintero:** None.

**Flores:** None.

**Yamane:** None.

**Sendt:** Advised that he would be absent at the October 1<sup>st</sup> meeting due to his attendance at the memorial service marking the first anniversary of the Las Vegas strip shooting and extended his prayers to the deceased and injured.

**Baca:** None.

**Garcia:** None.

**ADJOURNMENT** by Chair Yamane at 7:01 p.m. to the meeting of October 15, 2018 at 6:00 pm.

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CHAIRPERSON

The foregoing minutes were approved at the Regular Meeting of October 15, 2018.



CITY OF NATIONAL CITY - PLANNING DEPARTMENT  
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

**PLANNING COMMISSION STAFF REPORT**

TITLE: PUBLIC HEARING – CODE AMENDMENT AMENDING SECTIONS 18.24.050 (ALLOWED LAND USES AND PERMIT REQUIREMENTS), 18.30.230 (TOBACCO SPECIALTY SHOPS), AND 18.50 (GLOSSARY) OF TITLE 18 (ZONING) OF THE NATIONAL CITY MUNICIPAL CODE RELATED TO ELECTRONIC SMOKING DEVICES.

Case File No.: 2018-23 A

Staff report by: Martin Reeder, AICP – Principal Planner

Project location: Citywide

Applicant: City-initiated Land Use Amendment

Environmental review: Not a project per CEQA

Staff recommendation: Recommend approval of the amendments to the City Council

**BACKGROUND**

Staff Recommendation

Staff recommends that the Planning Commission recommend approval of the amendments to sections 18.24.050, 18.30.230, and 18.50 to the City Council.

History

At the City Council meeting of September 4, 2018, staff was asked to bring back an item for discussion related to the use of Electronic Smoking Devices. The subject was originally brought to the attention of the City Council and City staff by the American Lung Association ("Association"). The Association has suggested changes to four sections of the National City Municipal Code, including Chapters 9.37, 9.38, 10.52, and 18.50. The first three sections are under the sole purview of the City Council. Changes to Title 18 (Zoning) require a public hearing at, and recommendation to the City Council, by the Planning Commission.

The City Council initiated the amendments on September 18, 2018. All of the amendments, including those recommended by the Planning Commission to Title 18 of the Municipal Code will be brought back for a public hearing before City Council for their consideration.

### Overview

The Association provided suggested changes to Title 18, which generally focused on Section 18.50 (Glossary). However, staff is suggesting expanding those changes to also include Sections 18.24.050 (Allowed land uses and permit requirements) and 18.30.230 (Tobacco specialty shops). The additional changes are intended to clean up references to tobacco specialty shops to consider other similar uses.

### Proposed Changes

Section 18.24.050 subsection "B" of the Municipal Code (Allowed land uses and permit requirements) currently reads as follows:

- B. Permitted Land Uses. Land uses permitted in the mixed-use zones shall be as specified in Table 18.24.050 (Allowed Land Uses - Mixed-Use Zones).

TABLE 18.24.050  
Allowed Land Uses  
Mixed-Use Zones

Land Use	Permit Required by Zone				Specific Use Regulations
	MXC-1 (a)	MXC-2	MXD-1	MXD-2	Section 18.30.230
Tobacco specialty shops	-	-	C	C	

In order to be inclusive of other tobacco-related uses such as cigar bars or hookah lounges, staff suggests changing tobacco specialty shops to tobacco specialty businesses. This would make it clear that a Conditional Use Permit (CUP) is also required for these types of businesses, which has been a point of confusion with prospective businesses in the past.



Staff proposes Table 18.24.050 be amended as follows (changes in **bold**):

Land Use	Permit Required by Zone				Specific Use Regulations
	MXC-1 (a)	MXC-2	MXD-1	MXD-2	Section 18.30.230
Tobacco specialty <b><u>businesses</u></b>	-	-	C	C	

Section 18.30.230 (Tobacco specialty shops) currently reads as follows:

Tobacco specialty shops, where permitted pursuant to the Land Use Code, shall not be located within one thousand feet of any school, playground, recreation center or facility, childcare center or library in the City of National City.

In order to make this section consistent with other proposed changes and to incorporate the changes suggested by the Association, staff suggests the following language (changes noted in **bold**).

18.30.230 - Tobacco specialty **businesses**.

Tobacco specialty **businesses**, where permitted pursuant to the Land Use Code, **shall comply with the following standards:**

- 1. A Conditional Use Permit is required.**
- 2. The business** shall not be located within one thousand feet of any school, playground, recreation center or facility, childcare center, or library in the City of National City.
- 3. No alcohol or food may be sold or consumed on the premises.**
- 4. No person under the age of twenty-one years of age may enter the premises unless that person is accompanied by his or her parent or legal guardian.**

Bullet point number one incorporates the information in Table 18.24.050. Bullet point three is a change suggested by the Association. The reason for the change is to avoid the proliferation of hookah lounges, cigar lounges and vape shops that allow smoking



indoors in violation of state smoke-free laws, which has been an issue in the City of San Diego.

Currently, the State Labor Code, Section 6404.5(B), authorizes "tobacco shops" and attached "private smoker's lounges" to permit smoking indoors if the shop's "main purpose is the sale of tobacco products" and the smoker's lounge is "dedicated to the use of tobacco products". Unfortunately, these criteria are quite vague, which has made it difficult for San Diego and other cities to efficiently enforce smoke-free laws in these problem venues, some of which are located next to businesses that are suffering due to drifting secondhand smoke. While there have been opinions published by the Attorney General and California Legislative Counsel stating that consumption of food or beverages is not permitted in tobacco businesses, this change would codify that opinion.

Bullet point four codifies state regulations related to the legal age for purchase and use of tobacco products, which is 21 years old in the state of California.

Finally, the definition of "tobacco specialty shop" as contained in Section 18.50 (Glossary) currently reads as follows:

Tobacco specialty shop. "Tobacco specialty shop" means any business, the primary use of which is the sale of tobacco products or tobacco related paraphernalia. A business shall be determined a tobacco specialty shop when more than forty percent of its retail floor area is devoted to the display and sales of tobacco products and/or paraphernalia.

For consistency with the other changes in this request, staff proposes the definition be amended as follows (deletions noted as ~~strikethrough~~, additions in **bold**):

Tobacco specialty **business**. "Tobacco specialty ~~shop~~ **business**" means any business, the primary use of which is the **use and/or** sale of tobacco products or ~~tobacco-related~~ paraphernalia. A business shall be determined a tobacco specialty ~~shop~~ **business** when more than forty percent of its ~~retail~~ floor area is devoted to the **use,** display, and **or** sales of tobacco products and/or paraphernalia.

### Findings

There are two findings required for approval of a Code Amendment, one related to General Plan consistency and one related to compliance with the California Environmental Quality Act (CEQA).

### General Plan Conformance

The requested amendments are consistent with the General Plan, as Housing and Environmental Justice Policy HEJ-2.8: encourages smoke-free workplaces, multifamily housing, parks, and other outdoor gathering places to reduce exposure to second-hand smoke.

### CEQA Compliance

These amendments are not considered to be a project under CEQA as there would be no physical impact as a result of the change. The amendments would solely modify or add language related to tobacco and paraphernalia sales and to clarify conditions under which said items may be sold.

In addition, a third finding has been added as follows:

That the proposed amendments will make the Land Use Code consistent with State law, ensuring that minors do not have access to electronic smoking devices and other tobacco related products.

### Summary and next steps

The American Lung Association is recommending changes to the City's Municipal Code related to the use of Electronic Smoking Devices. Staff is supportive of changes to Title 18 (Sections 18.24.050, 18.30.230, and 18.50) of the Municipal Code and recommends that the Planning Commission support the amendments. The Commission's recommendation will be provided to the City Council at a subsequent public hearing at the City Council.

**OPTIONS**

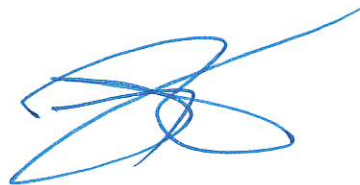
1. Recommend approval of the amendments to the Land Use Code based on the attached findings or findings to be determined by the Planning Commission; or
2. Recommend denial of the amendments to the Land Use Code based on findings to be determined by the Planning Commission; or,
3. Continue the item to a specific date.

**ATTACHMENTS**

1. Findings
2. Proposed Code changes
3. Resolution

A handwritten signature in blue ink, appearing to read 'Martin Reeder'.

MARTIN REEDER, AICP  
Principal Planner

A handwritten signature in blue ink, appearing to read 'Brad Raulston'.

BRAD RAULSTON  
Deputy City Manager

### **RECOMMENDED FINDINGS FOR APPROVAL**

1. That the proposed amendments are consistent with the General Plan, as Housing and Environmental Justice Policy HEJ-2.8: encourages smoke-free workplaces, multifamily housing, parks, and other outdoor gathering places to reduce exposure to second-hand smoke.
2. That the proposed amendments have been reviewed and been found to comply with the California Environmental Quality Act (CEQA); the amendments are not considered to be a project under CEQA as there would be no physical impact as a result of the change. The amendments would solely modify or add language related to tobacco and paraphernalia sales and to clarify conditions under which said items may be sold.
3. That the proposed amendments will make the Land Use Code consistent with State law, ensuring that minors do not have access to electronic smoking devices and other tobacco related products.



Proposed deletions noted with a ~~strikethrough~~

Proposed amendments noted as underlined font

#### 18.24.050 - Allowed land uses and permit requirements.

- B. Permitted Land Uses. Land uses permitted in the mixed-use zones shall be as specified in Table 18.24.050 (Allowed Land Uses - Mixed-Use Zones).

TABLE 18.24.050  
Allowed Land Uses  
Mixed-Use Zones

Land Use	Permit Required by Zone				Specific Use Regulations
	MXC-1 (a)	MXC-2	MXD-1	MXD-2	Section 18.30.230
Tobacco specialty <del>shops</del> <u>businesses</u>	-	-	C	C	

#### 18.30.230 - Tobacco specialty ~~shops~~ businesses.

Tobacco specialty ~~shops~~ businesses, where permitted pursuant to the Land Use Code, shall comply with the following standards:

1. A Conditional Use Permit is required.
2. The business ~~S~~ shall not be located within one thousand feet of any school, playground, recreation center or facility, childcare center, or library in the City of National City.
3. No alcohol or food may be sold or consumed on the premises.
4. No person under the age of twenty-one years of age may enter the premises unless that person is accompanied by his or her parent or legal guardian.

#### 18.50 – Glossary

[18.50.010] - Generally

Tobacco specialty ~~shop-business~~. "Tobacco specialty ~~shop-business~~" means any business, the primary use of which is the use and/or sale of tobacco products or ~~tobacco-related~~ paraphernalia. A business shall be determined a tobacco specialty ~~shop-business~~ when more than forty percent of its ~~retail~~ floor area is devoted to the use, display, and/or sales of tobacco products and/or paraphernalia.

RESOLUTION NO. 2018-16

A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NATIONAL CITY, CALIFORNIA, RECOMMENDING ADOPTION  
TO THE CITY COUNCIL OF AMENDMENTS TO SECTIONS 18.24.050  
(ALLOWED LAND USES AND PERMIT REQUIREMENTS), 18.30.230  
(TOBACCO SPECIALTY SHOPS), AND 18.50 (GLOSSARY)  
OF TITLE 18 (ZONING) OF THE NATIONAL CITY MUNICIPAL CODE  
RELATED TO ELECTRONIC SMOKING DEVICES.

APPLICANT: CITY-INITIATED.

CASE FILE NO. 2018-23 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, per Chapter 18.12.140 (B); and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendments at a duly advertised public hearing held on October 15, 2018 at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2018-23 A, which is maintained by the City and incorporated herein by reference; along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission recommends adoption to the City Council of the City of National City amendments to Sections 18.24.050 (Allowed land uses and permit requirements), 18.30.230 (Tobacco specialty shops), and 18.50 (Glossary) of Title 18 (Zoning) of the National City Municipal Code; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to comply with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning

Commission at the public hearing held on October 15, 2018, support the following findings:

1. That the proposed amendments are consistent with the General Plan, as Housing and Environmental Justice Policy HEJ-2.8: encourages smoke-free workplaces, multifamily housing, parks, and other outdoor gathering places to reduce exposure to second-hand smoke.
2. That the proposed amendments have been reviewed and been found to comply with the California Environmental Quality Act (CEQA); the amendments are not considered to be a project under CEQA as there would be no physical impact as a result of the change. The amendments would solely modify or add language related to tobacco and paraphernalia sales and to clarify conditions under which said items may be sold.
3. That the proposed amendments will make the Land Use Code consistent with State law, ensuring that minors do not have access to electronic smoking devices and other tobacco related products.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of October 15, 2018, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

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CHAIRPERSON